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WAGE AND HOUR COMPLIANCE

Public Works Contractor Registration

Definitions of "Contractor" and "Subcontractor"; Registration Required; Issuance and Term of Certificate of Registration

Proposed Amendments: N.J.A.C. 12:62-1.2, 2.1 and 2.2

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:11-56.48 et seq.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2003-487.

A public hearing on the proposed amendments will be held on the
following date at the following location:

Friday, January 9, 2004
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

Please call the Office of Regulatory Services at (609) 292-7375 if you wish
to be included on the list of speakers.

Submit written comments by February 13, 2004 to:

Frederick S. Cohen, Regulatory Officer
Office of Regulatory Services
New Jersey Department of Labor
PO Box 110—13th Floor, Suite G
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

If you need this document in Braille, large print or audio cassette, contact
the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-
852-7899.

The agency proposal follows:

Summary

In recent months, the Legislature amended provisions of the Public Works
Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. See P.L. 2003, c.91.
In order to make certain that these rules remain synchronous with the letter of
the law, the Department has determined that they themselves must be
amended to conform with the amended Act. To that end, the following
amendments are proposed:

N.J.A.C. 12:62-1.2, Definitions, is being amended to reflect the statutory
change to the definition of a "contractor." Thus, the proposed definition will
mean "... a person, partnership, association, joint stock company, trust,
corporation, or other legal business entity or successor thereof who enters into
a contract which is subject to the provisions of the New Jersey Prevailing
Wage Act, N.J.S.A. 34:11-56.25 et seq., and includes any subcontractor or
lower tier subcontractor of a contractor as defined in this section." Previously,
the definition had set forth the activities enumerated as being subject to the
Prevailing Wage Act. Moreover, the amended definition eliminates the
exemption to the requirements of the Public Works Contractor Registration
Act hitherto granted to any contractor bidding on or engaging in a project
related to a pumping station, treatment plant or other facility associated with
utility and environmental construction, reconstruction, demolition, alteration,
repair or maintenance.

PROPOSALS

N.J.A.C. 12:62-1.2 has also been amended to include the definition of a "subcontractor" as defined in the Prevailing Wage Act. Therefore, it is proposed that the regulatory definition of the subcontractor should be "... any subcontractor or lower tier subcontractor of a contractor."

Subsection (a) of N.J.A.C. 12:62-2.1, Registration required, is being amended to remove the term "engage in" therefrom, pursuant to the amendment to N.J.S.A. 34:11-56.51. The amended first sentence will thus read that "[n]o contractor shall bid on any contract for public work unless the contractor is registered pursuant to the Act." In addition thereto, the Department proposes to add to N.J.A.C. 12:62-2.1(a), following the latter cited sentence, that "[i]n addition, no contractor shall list a subcontractor in a bid proposal for a public works contract unless the subcontractor is registered pursuant to the terms of N.J.S.A. 34:11-56.48 et seq., the Public Works Contractor Registration Act, at the time the bid is submitted to the public entity. Moreover, no contractor or subcontractor, including a subcontractor not listed on the bid proposal, shall engage in the performance of any public work project unless the contractor or subcontractor is registered pursuant to the Act."

N.J.A.C. 12:62-2.1(d), which references contractor registration fees, is being amended to reflect the amendments made to N.J.S.A. 34:11-56.51 which makes those fees nonrefundable.

N.J.A.C. 12:62-2.2, Issuance and term of a certificate of registration, is being amended through the deletion of the present subsection (d). The latter provided that a contractor shall not be precluded from bidding for a public work contract or performing public work if the contractor has submitted a registration application to the Department and has included a copy of the application with the bid. The proposed amendment is reflective of the amendment made to N.J.S.A. 34:11-56.55 which now provides that submission of a contractor registration application is no longer a substitute for a valid certificate of registration as evidence of registration pursuant to the Act. The proposed new subsection (d), as per the dictates of N.J.S.A. 34:11-56.55, provides that each contractor shall, after the bid is made and prior to the awarding of the public works contract, submit to the public entity the certificates of registration for all subcontractors listed in the bid proposal.

In addition, N.J.A.C. 12:62-2.2 has been amended by the insertion of a new subsection (f) which provides that a registered contractor who allows his or her registration certificate to expire prior to attempting to renew same must subsequently apply for a registration certificate as if for the first time.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments will have the same positive social impact as those of their predecessor rules. In enacting the Public Works Contractor Registration Act in 1998, the Legislature had taken note of the growing concern over the increasing number of construction industry workers who labor on public works projects under conditions which are violative of the State's labor laws. In order to make certain that those workers receive the benefits and emoluments to which they are legally due, and in concert with the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., it promulgated the Public Works Contractor Registration Act. In so doing, the Legislature evidenced its intent to further ensure that public contractors adhere to a set of obligations, through the issuance of registration certificates, both to the public at large and to those persons who labor on public work projects. The Department's regulatory scheme has served to further the Legislature's worthy goals. Now, the proposed amendments thereto, by reflecting the recent legislative changes to the Act, will continue to further those goals by permitting the Department to continue tracking the activities of public works contractors so as to police the construction industry.

Economic Impact

The proposed amendments are intended to ensure that those public works contractors who have heretofore avoided the payment of fair wages and the remittance of appropriate payroll taxes, as required by applicable State labor laws, no longer evade those legal obligations. The proposed amendments will better equip the Department of Labor to enforce the State's labor laws and ensure that public works contractors who violate those laws do not receive the benefit of receiving public tax dollars. To the extent that the Department's efforts in this regard result in an increase in expense to those contractors not currently complying with State labor laws, in the way of higher labor costs or increased contributions to the Unemployment Insurance Fund, the proposed amendments will have negative economic impact upon those individuals. As for the economic impact of the proposed amendments on reputable public works contractors and laborers on public works projects, the former will

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continue to be less likely to have to contend with competitors who are able to underbid them due to estimates based on the payment of unfair wages. Moreover, the latter will continue to be better protected against the payment of unfair wages and the denial of other benefits due them under applicable State laws.

Federal Standards Statement

The proposed amendments do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. The proposed amendments simply enable the Department to continue to implement the provisions of the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. As a result, a Federal standards analysis is not required.

Jobs Impact

There is no anticipated increase or decrease in jobs as a result of the proposed amendments.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments require that all public works contractors, including those which are small businesses, as that term is defined within the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., provide, on an annual basis, the information requested in the "New Jersey Department of Labor Application for Public Works Contractor Registration" form as well as any supplemental information or documentation requested by the Department. This reporting requirement is dictated by the provisions of N.J.S.A. 34:11-56.48 et seq., and is vital to the success of the public works contractor registration program, the objectives of which are stated above. Again, to the extent that the proposed amendments better equip the Department to enforce State labor laws, both large and small public works contractors will be affected equally.

Smart Growth Impact

The Department does not anticipate that the proposed amendments will have any impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

12:62-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the New Jersey Prevailing Wage Act, P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq. [for the construction, reconstruction, demolition, alteration, repair or maintenance of a public building regularly open to and used by the general public or a public institution], and includes any subcontractor or lower tier subcontractor of a contractor as defined in this section [except that, for the purposes of the Act, no pumping station, treatment plant or other facility associated with utility and environmental construction, reconstruction, demolition, alteration, repair or maintenance shall be regarded as a public building regularly open to and used by the general public or a public institution].

"Subcontractor" means any subcontractor or lower tier subcontractor of a contractor.

12:62-2.1 Registration required

(a) No contractor shall bid on [or engage in] any contract for public work unless the contractor is registered pursuant to the Act. In addition:

1. No contractor shall list a subcontractor in a bid proposal for a public works contract unless the subcontractor as required is registered pursuant to the terms of N.J.S.A. 34:11-56.48 et seq., the

Public Works Contractor Registration Act, at the time the bid is submitted to the public entity; and

2. No contractor or subcontractor not listed on the bid proposal shall engage in the performance of any public work project unless the contractor or subcontractor is registered pursuant to the Act.

(b)-(c) (No change.)

(d) The contractor shall pay an initial, non-refundable, annual registration fee of \$300.00 to the Commissioner. The non-refundable fee for the second annual registration shall be \$300.00. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$500.00

(e)-(g) (No change.)

12:62-2.2 Issuance and term of a certificate of registration

(a)-(c) (No change.)

(d) [A contractor shall not be precluded from bidding for a public work if the contractor has submitted a registration application to the Department and has included a copy of the application with the bid.] Each contractor shall, after the bid is made and prior to the awarding of the public works contract, submit to the public entity for whom the work is to be performed the certificates of registration for all subcontractors listed in the bid proposal.

(e) (No change.)

(f) A registered contractor who allows his or her contractor registration certificate to expire prior to attempting to renew same, must subsequently apply for a registration certificate as if for the first time.